

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KING K. GARDNER,

Petitioner,

V.

STATE OF WASHINGTON, et al.,

Respondent.

CASE NO. 3:16-CV-05427-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: OCTOBER 28, 2016

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the petition pursuant to 28 U.S.C. § 2254.

The Court recommends that the action be dismissed. Petitioner has failed to comply with a Court order and failed to prosecute this action.

1 BACKGROUND

2 On June 2, 2016, petitioner King K. Gardner who is proceeding *pro se*, filed a Proposed
3 Petition for Writ of Habeas Corpus. Dkt. 1. Petitioner did not file the proper form for proceeding
4 IFP in this Court. *See* Dkt. 1. The Clerk of Court instructed petitioner to file the proper IFP form
5 by July 5, 2016. Dkt. 2. The Clerk of Court provided petitioner with the correct form. Dkt. 2-1.

6 On July 28, 2016 the Court ordered petitioner to submit the proper IFP form or pay the
7 \$5.00 filing fee by August 29, 2016. Dkt. 4. The Clerk also sent plaintiff the proper IFP form.
8 *See id.* The Court advised petitioner that if he failed to comply with the Court's order, the Court
9 would recommend this case be dismissed. *Id.* Petitioner has failed to pay the filing fee or submit
10 the proper IFP form.

11 DISCUSSION

12 Federal Rule of Civil Procedure 41(b) provides for involuntary dismissal if a petitioner
13 fails to prosecute or to comply with a court order. The dismissal counts as an adjudication on the
14 merits unless the Court provides otherwise.

15 To date, petitioner has failed to submit the proper IFP form or pay the filing fee. *See* Dkt.
16 Petitioner has failed to comply with the Court's order and has also failed to prosecute this action.
17 Petitioner does not show good cause for not complying with the Court's order. Accordingly, the
18 Court recommends dismissal of this action.

19 CONCLUSION

20 The Court recommends that this action be dismissed for failure to comply with a Court
21 order. Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), petitioner shall have fourteen
22 (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure
23 to file objections will result in a waiver of those objections for purposes of de novo review by the
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1 district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R.
2 Civ. P. 72(b), the clerk is directed to set the matter for consideration on **October 28, 2016** as
3 noted in the caption.

4 Dated this 30th day of September, 2016.

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7 J. Richard Creatura
8 United States Magistrate Judge
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